IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.870 OF 2006

In

WRIT PETITION NO.2464 OF 2003

Mr.S.R.Mishra : Appellant
(Orig.Respondent)

V/s.

Brihanmumbai Municipal Corporation : Respondent
(Orig.Petitioner)

...

Ms Neeta Karnik for the appellant.

Mr.J.S.Saluja i/b. M/s.M.V.Kini & Co., for the respondent.

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CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATE : DECEMBER 6, 2006.

P.C.

We heard Ms Neeta Karnik, the counsel for the appellant, and perused the order dated 20.7.2006 passed by the learned single Judge and so also the orders dated 5.8.2002 and 23.8.2002 passed by the Labour Court and the order dated 29.11.2002 passed by the Industrial Court.

2. The appellant was a bus driver in the respondent undertaking. While driving the bus assigned to him on

30.5.2000, he is said to have dashed against a cyclist who was riding his bicycle with his wife as a pillion rider. The cyclist died on the spot and his wife received injuries. The appellant did not stop the bus nor did he report the accident to the police or the undertaking. He was charge-sheeted for misconduct under standing orders 20(j) and 20(k) of the certified standing orders. The Inquiry Officer, after completion of the inquiry, concluded that the charge of gross negligence under standing order 20(j) was proved. The Trying Officer, in the background of his unsatisfactory record, did not find him fit to continue in the service of the undertaking and the dismissal order was passed on 15.11.2000.

3. The appellant challenged the dismissal order in the application made under sections 78 and 79 of the Bombay Industrial Relations Act, 1946. The Labour Court, by its order dated 5.8.2002, held that the inquiry was fair and proper and did not suffer from any legal infirmity. By the subsequent order dated 23.8.2002, the Labour Court held that the punishment of dismissal was not commensurate with the gravity of the misconduct and, consequently, he interfered with the order of dismissal and passed the order setting aside the dismissal order and further ordered that the appellant shall not be

entitled to any wages for the period from 15.11.2000 until the date of that order. The employer carried the matter in appeal before the Industrial Court. By its order dated 29.11.2002, the Industrial Court found no justifiable ground to interfere with the order of the Labour Court.

4. The employer challenged the aforesaid order by filing the Writ Petition before this Court. The learned single Judge allowed the petition and set aside the order of the Labour Court dated 23.8.2002 and that of the Industrial Court dated 29.11.2002.

5. The counsel for the appellant submitted that the learned single Judge seriously erred in re-appreciating the evidence on the question of disproportionate punishment and erred in setting aside the just order passed by the Labour Court on 23.8.2002 and confirmed in appeal by the Industrial Court on 29.11.2002.

6. We are not persuaded by the submissions of the counsel for the appellant.

7. The inquiry into the charges against the appellant was found to have been conducted fairly and properly. In the inquiry, upon consideration of the entire material,

the Inquiry Officer concluded that the charge of gross negligence under standing order 20(j) was clearly proved. The charge having been proved and in view of the past conduct and unsatisfactory record of the appellant, if the learned single Judge interfered with the order of the Labour Court, confirmed in appeal by the Industrial Court, the impugned order cannot be faulted.

8. The record of the appellant reflects that prior to the incident in which the appellant was charge-sheeted, on four occasions earlier, the appellant has been found involved in accidents and collisions. On 23.6.1993, the appellant was cautioned for collision with tempo No.MMH 11692. Thereafter, on 1.10.1994, he was cautioned for causing personal injury to a passenger. Then on 29.1.1999 he was again censured for collision with taxi no.MRO 7247 and, thereafter, on 4.10.1997 he was suspended for one day for misconduct under standing order 20(j). Besides that, on 20 times, the appellant has been found to have indulged in unsatisfactory conduct. He has been censured for misconduct under standing orders 20(a), 20(f) and 20(k) -- in all 20 times. We fail to understand with such blemished record, how could the punishment of dismissal be said to be disproportionate by the Labour Court, once the charge of gross negligence under standing order 20(j) was found to have been

established.

9. The consideration of the matter by the learned single Judge is absolutely proper, warranting no interference in appeal.

10. Appeal is dismissed in limine.

R.M. LODHA, J.

S.A. BOBDE, J.